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In the

Supreme Court

of the

United States

OCTOBER TERM, 1970

No. 1299

EDWARD J. SEOT,

Petitioner,

vs.

FLORIDA INDUSTRIAL COMMISSION AND NATIONAL AIRLINES, INC.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

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Respondent is not satisfied that Petitioner has correctly presented the statutes involved in this case. Further, Respondent is not satisfied with Petitioner's presentation of questions presented for review in this case. And, finally, Respondent is not satisfied that Petitioner has accurately presented the statement of the case.

QUESTION PRESENTED

Whether denial of compensation by a State, pursuant to its unemployment compensation statute, to workers who are voluntarily unemployed due to a labor dispute and who voluntarily participate in a labor dispute collides with national labor policy.

STATUTE INVOLVED

The Florida Unemployment Compensation Law (15 F.S.A. (1969)) is the statute which this case involves. Such law provides, in pertinent part, as follows:

> "443.06 Disqualification for benefits. — An individual shall be disqualified for benefits:
>
> • • •
>
> "(4) For any week with respect to which the division finds that his total or partial unemployment is due to a labor dispute in active progress which exists at the factory, establishment or other premises at which he is or was last employed; •••"

STATEMENT

The question presented by this case pertains to the denial by the State of Florida of unemployment compensation to workers who voluntarily became unemployed due to a labor dispute, and who voluntarily participated in a labor dispute between their employer and another group of workers of their employer, such other group being represented by a labor organization other than the one which represents them. The facts relevant to this question may be stated as follows.

Petitioner and others involved below rendered service for National Airlines, Inc. as mechanics and cleaners (R. 44, 48, 92). International Association of Machinists and Aerospace Workers (hereinafter to be referred to as IAM) is their duly authorized bargaining agent (R. 78). On January 31, 1970, a labor dispute commenced in active progress, at the premises at which Petitioner was employed, between National Airlines, Inc. and workers whose duly authorized bargaining agent (hereinafter to be referred to as ALEA) is Air Line Employees Association (R. 10). Persons attached to this bargaining unit established picket lines at the premises of National Airlines, Inc. (R. 13, 42). Picketing was conducted in a peaceful and orderly manner (R. 10, 13, 29, 32, 46). Petitioner and others involved below honored the ALEA picket lines (R. 45, 73, 74, 104, 106); they voluntarily withheld their services when work was available for them (R. 51, 60, 73, 84, 104).

On February 2, 1970, Petitioner filed a claim for unemployment compensation (R. 1). Respondent held Petitioner to be disqualified for unemployment compensation, under the provisions of Section 443.06(4), Florida Statutes (R. 3), for the period beginning January 31, 1970, and for the duration of his unemployment which was due to the labor dispute between ALEA represented workers and National Airlines, Inc. (R. 111).

Effective February 20, 1970, National Airlines, Inc. furloughed Petitioner and others involved below (R. 47, 49, 121).

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

Without ever mentioning *Nash v. Florida Industrial Commission*, 389 U.S. 235, Petitioner attempts to force this case into the mold of that case. Petitioner's attempt in that regard has caused distortion. The decisions below make it clear that Petitioner and others involved below were denied unemployment compensation because they voluntarily became unemployed due to a labor dispute and voluntarily participated in a labor dispute and not because of their exercise of federally guaranteed rights.

Petitioner in the first instance voluntarily became unemployed because of a labor dispute between ALEA represented workers and National Airlines, Inc. and he persisted in remaining unemployed due to such labor dispute.

The Appeals Referee in his decision reasoned: (R. 110, 111)

> "The hearing testimony further shows that another labor dispute commenced in active progress on January 31, 1970, at the premises at which claimants were employed and that they became unemployed due to such dispute. This labor controversy, which has not been terminated, was between the employer and employees whose bargaining agent is Air Line Employees Association. All claimants participated in the dispute by refusing to cross peaceful picket lines established by the striking employees at a time when work was available for them. Accordingly,

> it should be held that claimants' total or partial unemployment is due to a labor dispute in active progress which exists at the premises at which they are or were last employed and since none can meet the exceptions provided for in the Law, they are properly subject to disqualification for the duration of the Air Line Employees Association labor dispute."

This Court has approved the denial of unemployment compensation when due to a labor dispute. *Unemployment Compensation Commission v. Aragon*, 329 U.S. 143 (1946). The reason ascribed by this Court to the legislative exclusion is "the broad policy of the legislature to compensate only persons involuntarily unemployed." *Ibid.*, fn. 13. And it is to be noted that the provisions of the Alaska law considered by this Court in *Unemployment Compensation Commission v. Aragon*, 329 U.S. 143, are parallel with provisions of Section 443.06, Florida Statutes, pertinent in this instance.

Petitioner is really urging the Court to reverse the factual finding at all levels below that compensation was denied because of voluntary participation in a labor dispute; i.e. in spite of the classic symptoms of voluntary unemployment due to a labor dispute and refusal to work at available employment because of a labor dispute, Respondent really denied compensation because Petitioner exercised federally guaranteed rights. The findings below all rest on competent substantial evidence. This Court does not normally exercise its jurisdiction merely to review a decision of a state court upon a question of fact. *Grayson v. Harris*, 267 U.S. 352, 358; *Fry Roofing Co. v. Wood*, 344 U.S. 157, 160.

The differences between *Nash v. Florida Industrial Commission*, 389 U.S. 235, and the instant case are so many as to render *Nash* inappropriate:

(1) *Nash* had been laid off work and was awaiting only a call to return; Petitioner refused to work at available employment, voluntarily became unemployed due to a labor dispute and voluntarily participated in a labor dispute.

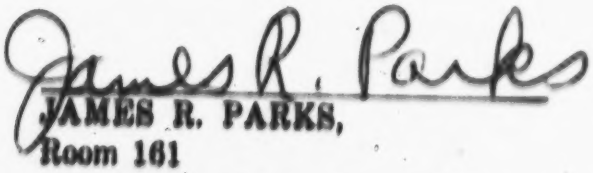
(2) The sole reason for denying *Nash* compensation was her filing of an unfair labor practice charge. 389 U.S. 28. The sole reason for denying Petitioner and others involved below compensation was voluntary participation in a labor dispute.

(3) The dilemma noted by this Court in *Nash* (389 U.S. 239). (keeping quiet and collecting compensation or filing an unfair labor practice charge and forfeiting compensation) did not exist in this case.

CONCLUSION

For the reasons stated this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,



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CERTIORARI DENIED